

Introduced by Senator Alquist

December 13, 2010

An act to add Section 6377 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 47, as introduced, Alquist. Sales and use taxes: exemption: manufacturing and research activities.

The Sales and Use Tax Law imposes a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state, and provides various exemptions from the taxes imposed by that law.

On and after January 1, 2011, this bill would exempt from a specified portion of those taxes, the gross receipts from the sale of, and the storage, use, or other consumption of, specified tangible personal property including property purchased for use by a qualified person, as defined, in manufacturing, processing, or fabricating of property, or use in research and development activities.

This bill would specify that this exemption does not apply to local sales and use taxes or transactions and use taxes.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 6377 is added to the Revenue and Taxation Code, to read:

6377. (a) On and after January 1, 2011, there are exempted from the taxes imposed by this part the gross receipts from the sale of, and the storage, use, or other consumption in this state of, by a qualified person any of the following:

(1) Tangible personal property that will become an ingredient or component part of tangible personal property primarily manufactured, processed, fabricated, or used in research and development activities.

(2) Tangible personal property directly and primarily used or consumed in or during the actual manufacturing, processing, fabrication, or research and development of tangible personal property if the use or consumption of the property is necessary or essential to the manufacturing, processing, fabrication operation, or research and development, and directly makes or causes a chemical or physical change to either of the following:

(A) The product being manufactured, processed, fabricated, or used in a research and development activity.

(B) Any intermediate or preliminary product that will become an ingredient or component part of the product being manufactured, processed, fabricated, or used in a research and development activity.

(3) Actuators, steam production equipment and its fuel, in-process flow through tanks, cooling towers, generators, heat exchangers, transformers and the switches, breakers, capacitor banks, regulators, relays, reclosers, fuses, interruptors, reactors, arrestors, resistors, insulators, instrument transformers, and telemetry units that are related to the transformers, electronic control room equipment, computerized control units, pumps, compressors, and hydraulic units that are primarily used to power, supply support, or control equipment that qualifies for exemption under paragraph (2) or paragraph (6) of this subdivision, or to generate electricity, chilled water, or steam for ultimate sale.

(4) Transformers located at an electric generating facility that increase the voltage of electricity generated for ultimate sale, the electrical cable that carries the electricity from the electric generating equipment to the step-up transformers, and the switches,

1 breakers, capacitor banks, regulators, relays, reclosers, fuses,
2 interruptors, reactors, arrestors, resistors, insulators, instrument
3 transformers, and telemetry units that are related to the step-up
4 transformers.

5 (5) Transformers that decrease the voltage of electricity
6 generated for ultimate sale and the switches, breakers, capacitor
7 banks, regulators, relays, reclosers, fuses, interruptors, reactors,
8 arrestors, resistors, insulators, instrument transformers, and
9 telemetry units that are related to the step-down transformers.

10 (6) Tangible personal property primarily used or consumed in
11 manufacturing, processing, fabrication, or research and
12 development of tangible personal property if the use or
13 consumption of the property is necessary and essential to a
14 pollution control process.

15 (7) Lubricants, chemicals, chemical compounds, gases, or liquids
16 that are primarily used or consumed during manufacturing,
17 processing, fabrication, or research and development of tangible
18 personal property if their use or consumption is necessary and
19 essential to prevent the decline, failure, lapse, or deterioration of
20 equipment exempted by this section.

21 (8) Gases used on the premises of a manufacturing plant or
22 facility used in performing research and development activities to
23 prevent contamination of raw material or product, or to prevent a
24 fire, explosion, or other hazardous or environmentally damaging
25 situation at any stage in the manufacturing or research and
26 development process, or in loading or storage of the product or
27 raw material on the premises.

28 (9) Tangible personal property primarily used or consumed
29 during manufacturing, processing, fabrication, or research and
30 development of tangible personal property if the use or
31 consumption of the property is necessary and essential to a quality
32 control process that tests tangible personal property that is being
33 manufactured, processed, fabricated, or used in performing research
34 and development activities.

35 (10) Tangible personal property primarily used or consumed in
36 manufacturing, processing, fabrication, or research and
37 development of tangible personal property if the use or
38 consumption of the property is necessary and essential to comply
39 with federal, state, or local laws, or rules and regulations that
40 establish requirements related to public health.

(11) Tangible personal property specifically installed to do any of the following:

(A) Reduce water use and wastewater flow volumes from the manufacturing, processing, fabrication, research and development or repair operation.

(B) Reuse and recycle wastewater streams generated within the manufacturing, processing, fabrication, research and development, or repair operation.

(C) Treat wastewater from another industrial or municipal source for the purpose of replacing existing freshwater sources in the manufacturing, processing, fabrication, research and development, or repair operation.

(12) Chemicals, catalysts, and other materials that are primarily used during a manufacturing, processing, fabrication, or research and development operation to produce or induce a chemical or physical change, to remove impurities, or to make the product more marketable.

(13) Semiconductor, pharmaceutical or biotechnology fabrication, or research and development clean rooms and equipment.

(b) For purposes of this section, all of the following apply:

(1) “Fabricating” means to make, build, create, produce, or assemble components or property to work in a new or different manner.

(2) “Manufacturing” means the activity of converting or conditioning property by changing the form, composition, quality, or character of the property for ultimate sale at retail or use in the manufacturing of a product to be ultimately sold at retail. Manufacturing includes any improvements to tangible personal property that result in a greater service life or greater functionality than that of the original property. Manufacturing also includes the production of a publication for the dissemination of news of a general character and of a general interest that is printed on newsprint and distributed to the general public daily, weekly, or at other short intervals. The manufacturing of computer software begins with the design and writing of the code or program for the software and includes the testing or demonstration of the software.

(3) “Primarily” means tangible personal property used 50 percent or more of the time in an activity described in subdivision (a).

1 (4) “Process” means the period beginning at the point at which
2 any raw materials are received by the qualified person and
3 introduced into the manufacturing, processing, refining, fabricating,
4 or recycling activity of the qualified person and ending at the point
5 at which the manufacturing, processing, refining, fabricating, or
6 recycling activity of the qualified person has altered tangible
7 personal property to its completed form, including packaging, if
8 required. Raw materials shall be considered to have been
9 introduced into the process when the raw materials are stored on
10 the same premises where the qualified person’s manufacturing,
11 processing, refining, or recycling activity is conducted. Raw
12 materials that are stored on premises other than where the qualified
13 person’s manufacturing, processing, refining, fabricating, or
14 recycling activity is conducted, shall not be considered to have
15 been introduced into the manufacturing, processing, refining,
16 fabricating, or recycling process.

17 (5) “Processing” means the physical application of the materials
18 and labor necessary to modify or change the characteristics of
19 property.

20 (6) “Qualified person” means a manufacturer or an entity
21 performing research and development.

22 (7) “Research and development” means those activities that are
23 described in Section 174 of the Internal Revenue Code or in any
24 regulations thereunder. The research and development of computer
25 software begins with the design and writing of the code or program
26 for the software and includes the testing or demonstration of the
27 software.

28 (8) “Semiconductor, pharmaceutical or biotechnology
29 fabrication, or research and development clean rooms and
30 equipment” means all tangible personal property, without regard
31 to whether the property is affixed to or incorporated into realty,
32 used in connection with the manufacturing, processing, fabrication,
33 or research and development in a clean room environment of a
34 semiconductor, pharmaceutical, or biotechnology product, without
35 regard to whether the property is actually contained in the clean
36 room environment. The term includes integrated systems, fixtures,
37 and piping, all property necessary or adapted to reduce
38 contamination or to control airflow, temperature, humidity,
39 chemical purity, or other environmental conditions or
40 manufacturing or research and development tolerances, and

1 production equipment and machinery. The term does not include
2 the building or a permanent, nonremovable component of the
3 building, that houses the clean room environment. The term
4 includes moveable clean room partitions and clean room lighting.

5 (c) No exemption shall be allowed under this section unless the
6 purchaser furnishes the retailer with an exemption certificate,
7 completed in accordance with any instructions or regulations as
8 the board may prescribe, and the retailer subsequently furnishes
9 the board with a copy of the exemption certificate. The exemption
10 certificate shall contain the sales price of the machinery or
11 equipment that is exempt pursuant to subdivision (a).

12 (d) Notwithstanding any provision of the Bradley-Burns
13 Uniform Local Sales and Use Tax Law (Part 1.5 (commencing
14 with Section 7200)) or the Transactions and Use Tax Law (Part
15 1.6 (commencing with Section 7251)), the exemption established
16 by this section shall not apply with respect to any tax levied by a
17 county, city, or district pursuant to, or in accordance with, either
18 of those laws.

19 (e) (1) Notwithstanding subdivision (a), the exemption provided
20 by this section shall not apply to any sale or use of property that,
21 within one year from the date of purchase, is either removed from
22 California, converted from an exempt use under subdivision (a)
23 to some other use not qualifying for the exemption, or used in a
24 manner not qualifying for the exemption.

25 (2) Notwithstanding subdivision (a), the exemption established
26 by this section shall not apply with respect to any tax levied
27 pursuant to Sections 6051.2 and 6201.2, or pursuant to Section 35
28 of Article XIII of the California Constitution.

29 (f) If a purchaser certifies in writing to the seller that the property
30 purchased without payment of the tax will be used in a manner
31 entitling the seller to regard the gross receipts from the sale as
32 exempt from the sales tax, and within one year from the date of
33 purchase, the purchaser (1) removes that property from California,
34 (2) converts that property for use in a manner not qualifying for
35 the exemption, or (3) uses that property in a manner not qualifying
36 for the exemption, the purchaser shall be liable for payment of
37 sales tax, with applicable interest, as if the purchaser were a retailer
38 making a retail sale of the property at the time the property is so
39 removed, converted, or used, and the sales price of the property

1 to the purchaser shall be deemed the gross receipts from that retail
2 sale.

3 (g) This section applies to leases of tangible personal property
4 classified as “continuing sales” and “continuing purchases” in
5 accordance with Sections 6006.1 and 6010.1. The exemption
6 established by this section shall apply to the rentals payable
7 pursuant to such a lease, provided the lessee is a qualified person
8 and the property is used in an activity described in subdivision (a).
9 Rentals that meet the foregoing requirements are eligible for the
10 exemption for a period of six years from the date of commencement
11 of the lease. At the close of the six-year period from the date of
12 commencement of the lease, lease receipts are subject to tax
13 without exemption.

14 SEC. 2. This act provides for a tax levy within the meaning of
15 Article IV of the Constitution and shall go into immediate effect.